

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 8136	DATE	8/7/2003
CASE TITLE	Cross vs. Risk Management Alternatives, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Defendant's renewed motion for judgment on the pleadings is granted and the case is dismissed. Any pending motion in this case is terminated as moot. Enter Memorandum Opinion and Order.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	U.S. DISTRICT COURT CLERK 03 AUG - 7 PM 6:08 FILED FOR DOCKETING 8/7/2003 central Clerk's Office	3	Document Number 26
<input type="checkbox"/>	No notices required.		number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		AUG 08 2003	
<input type="checkbox"/>	Notified counsel by telephone.		date docketed	
<input type="checkbox"/>	Docketing to mail notices.		9/8	
<input checked="" type="checkbox"/>	Mail AO 450 form.		docketing deputy initials	
<input type="checkbox"/>	Copy to judge/magistrate judge.	8/7/2003	date mailed notice	
MPJ	courtroom deputy's initials	MPJ	mailing deputy initials	

the bankruptcy court as a contempt action for RMA's violation of the automatic stay. I grant the motion.

A motion for judgment on the pleadings is subject to the same standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6), and thus "should not be granted unless it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief." *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989).

The facts in this case are virtually identical to those of *Randolph v. IMBS, Inc.*, No. 02 C 6368, 2003 U.S. Dist. LEXIS 1654 (N.D. Ill. Feb. 4, 2003) (Bucklo, J.). In *Randolph*, as here, the defendant attempted to collect an unpaid debt which was discharged in a Chapter 7 bankruptcy proceeding. The plaintiff filed suit in this court under the FDCPA. I granted the defendant creditor's motion to dismiss on the grounds that a remedy for actions which violate the automatic stay must be brought in bankruptcy court.

Ms. Cross urges me to reconsider the holding in *Randolph*, pointing out that Judge Kennelly has taken the opposite view. See *Hyman v. Tate & Kirlin*, No. 02 C 242, 2003 U.S. Dist. LEXIS 4822 (N.D. Ill. Mar. 26, 2003) (Kennelly, J.). However, as I discussed in *Randolph*, while it is clear that such an aggrieved debtor such as Ms. Cross may seek a remedy in bankruptcy court, the Seventh Circuit has not ruled on the question of whether he or she has an

additional remedy under the FDCPA in district court, and district court authority is deeply divided.

The most informative Seventh Circuit opinion in this area remains *Cox v. Zale Delaware Inc.*, 239 F.3d 910 (7th Cir. 2001). In *Cox*, the Seventh Circuit held that a suit for violation of section 524(c) of the Bankruptcy Code, which requires debt reaffirmation agreements to be filed with the bankruptcy court, may be brought only as a contempt action, "since the debtor would be seeking to enforce the order of discharge issued in that [bankruptcy] proceeding." *Id.* at 917. I read this as an indication of the circuit's preference for efficient resolution of discharge-related claims in one forum.

Ms. Cross suggests that to deny her the opportunity to pursue her claim in this court would contravene the principle that where two federal statutes address the same subject, courts should give effect to both. *Peeples v. Blatt*, No. 00 C 7028, 2001 U.S. Dist. LEXIS 11689, at *13 (N.D. Ill. Aug. 14, 2001) (Gottschall, J.) (holding that a bankruptcy debtor subjected to collection attempts has a right of action under both the Bankruptcy Code and the FDCPA). While I recognize that principle, it must be weighed against the expressed goal of the Bankruptcy Code to provide a comprehensive enforcement scheme in bankruptcy cases. See *Bolen v. Bass*, No. 97 C 3944, 2001 U.S. Dist. LEXIS 16964, at *15 (N.D. Ill. Oct. 18, 2001) (Lefkow, J.) (holding that the exclusive remedy for

attempts to collect discharged debts is a contempt action in bankruptcy court); see also *Wehrheim v. Secrest*, No. 00-1328, 2002 U.S. Dist. LEXIS 19020, at *19 (S.D. Ind. Aug. 16, 2002) (holding that Cox precludes suits under the FDCPA that might have been brought as a contempt proceeding in bankruptcy court).

I stand by my reasoning in *Randolph*, and hold that Ms. Cross cannot sustain this action under the FDCPA. Any remedy for a creditor's collection actions during a pending bankruptcy should be provided by the bankruptcy court. The motion for judgment on the pleadings is GRANTED.

ENTER ORDER:



Elaine E. Bucklo
United States District Judge

Dated: August 7, 2003